

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

**JOHN MARTENS and PAT MARTENS,
Individually and as co-personal
representatives of the Estate of
V.M., deceased,**

Plaintiffs,

vs.

No. 17-CV-00946 MV/LF

**CITY OF ALBUQUERQUE,
JOHN DOES 1-10 and JANE DOES
1-10, individually,**

Defendants.

**UNOPPOSED MOTION AND MEMORANDUM IN SUPPORT OF
MOTION TO REMAND TO STATE COURT**

Plaintiffs, John Martens and Pat Martens, Individually and as Co-Personal
Representatives of the Estate of V.M., deceased, by and through their attorneys of record,
Bowles Law Firm (Jason Bowles) and Gorence & Oliveros, P.C. (Robert J. Gorence, Louren
Oliveros, and Amye Green), hereby moves this Court to remand this matter to the Second
Judicial District Court. As grounds therefor, Plaintiffs state as follows:

1. In accordance with D.N.M. LR-CV 7.5(a), the Plaintiffs have combined the
motion and supporting brief.
2. On August 15, 2017, Plaintiffs filed their Complaint for Injunctive Relief and
Damages, D-202-CV-2017-5905, in the Second Judicial District Court, County of Bernalillo,
New Mexico.

3. On September 15, 2017, the Defendant, City of Albuquerque, filed its Notice of Removal removing this matter to the United States District Court for the District of New Mexico. [Doc.1].

4. In their Complaint, Plaintiffs alleged a *Monell* claim as well as procedural due process violations pursuant to 42 U.S.C. § 1983 in Counts 1 and 2. The remaining five counts alleged violations under state tort law for negligence, negligence *per se*, wrongful death, municipal liability and law enforcement liability against the Defendant City of Albuquerque and Defendants John and Jane Does 1-10.

3. On April 25, 2018, the parties stipulated to the dismissal of Counts 1 and 2 of Plaintiffs' Complaint which encompassed the 42 U.S.C. § 1983 claims. [Doc. 43].

4. Defendant City of Albuquerque properly removed this matter to federal court early in the litigation. At this point, however, because all of the federal claims have been dismissed from the case and only state law claims remain, the Court has the discretion to remand this matter back to state court. *Carnegie-Mellon University v. Cohill*, 484 U.S. 343, 351 (1988) (federal district court has discretion to remand to state court a removed case involving pendent claims). State court is the proper forum for this matter as only state law claims survive. Accordingly, Plaintiffs request that this matter be remanded to state court.

5. Counsel for Defendant City of Albuquerque, Stephanie Griffin, has been contacted and does not oppose this Motion.

FOR THESE REASONS, Plaintiffs respectfully request that this motion be granted, that the Court enter a remand order in this matter, and for whatever other relief this Court deems just and proper.

Respectfully Submitted,

/s/ Amye Green

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Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on May 8, 2018, I filed the foregoing through this Court's CM/ECF filing system, and caused the following counsel of record to be served by electronic means, as more fully reflected on the Notice of Electronic Filing.

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/s/ Amye Green